ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2009

Ms. M. Ann Montgomery
Assistant County and District Attorney
Ellis County and District Attorney's Office
1201 North Higway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2009-05751

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 341791.

The Waxahachie Police Department (the "department") received a request for all information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that you have only submitted an interoffice memorandum pertaining to the specified incident. Thus, to the extent any additional information responsive to the request and maintained by the department existed on the date the department received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the requestor contends that he was not properly notified of the department's request for a ruling from this office as required by section 552.301(d)(2) of the Government

[1]Although, you also raise section 552.103 of the Government Code as an exception to disclosure of the requested information, you have provided no arguments regarding the applicability of this section. Since you have not submitted arguments concerning this exception, we assume that you no longer urge it. *See* Gov't Code §§ 552.301(b), (e), .302.

Code. *See* Gov't Code § 552.301(d) (governmental body must provide requestor with copy of governmental body's written communication to attorney general asking for decision). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. The request submitted by the department indicates that the department received the written request for information on February 10, 2009. We note that the department was closed on February 16, 2009 for the Presidents' Day Holiday. Thus, the department was required to request a ruling from this office and provide the requestor with a copy of its written communication with this office by February 25, 2009. The department requested a decision from our office on February 24, 2009. *See id.* § 552.308(a) (prescribing standards for timeliness of action by United States or common or contract carrier). We note the information submitted by the department and the requestor indicates the department simultaneously sent a copy of the request for a decision to the requestor. Further, the requestor has informed this office that the requestor's copy of the request for a decision was received by him in the United States Mail on February 25, 2009. *See id.* Based on the information submitted by the department and the requestor, we find that the department has complied with the requirements of section 552.301(d)(2). *See id.* § 552.308(a)(2). Accordingly, we will address the department's argument against disclosure.

Section 552.108 of the Government Code provides in relevant part the following:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
>
> > (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
> >
> > . . .
>
> (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:
>
> > (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Id. § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the submitted memorandum appears to be related to an administrative investigation into an officer involved shooting. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992,

writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you inform this office that the memorandum at issue is related to a current criminal investigation by the Texas Rangers. You also inform this office that the Ellis County District Attorney's office (the "district attorney") will prosecute the case and, therefore, objects to the release of the submitted information. Based on the district attorney's representation, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to the submitted information.

We note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the department may withhold the submitted information on behalf of the district attorney under section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

Laura E. Ream

Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 341791

Enc. Submitted documents

c: Requestor
(w/o enclosures)